

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

U.S. BANK, NATIONAL ASSOCIATION,)
)
Plaintiff,)
)
vs.) Civil No. 11-cv-546-JPG-PMF
)
MICHEL E. CROMEANS a/k/a MICHAEL)
CROMEANS, DIANA K. CROMEANS a/k/a)
DIANA CROMEANS, BANK OF AMERICA,)
N.A., UNITED STATES OF AMERICA,)
CITIBANK USA, NA f/k/a CITIBANK)
(SOUTH DAKOTA) N.A., MIDLAND)
FUNDING, LLC, UNKNOWN OWNERS,)
and NON-RECORD CLAIMANTS,)

MOTION TO DISMISS

The United States of America, by Stephen R. Wigginton, United States Attorney for the Southern District of Illinois and J. Christopher Moore, Assistant United States Attorney, moves pursuant to Fed. R. Civ. P. 12 (b)(6), for entry of an order dismissing the above cause for failure to state a claim upon which relief can be granted by reason of lack of standing, and states as follows:

1. This case was originally filed in the Circuit Court of Washington County and removed to the United States District Court for the Southern District of Illinois.
2. Plaintiff is U.S. Bank, National Association.
3. The mortgagee named on the face of the mortgage is *Mercantile Bank of Southern Illinois*, organized and exiting under the laws of the State of Illinois.
4. The Complaint makes the conclusory legal allegation that “[p]laintiff is the mortgagee under 735 ILCS 5/15-1208.” (Complaint ¶3(n)).

5. When originally filed in state court, Plaintiff failed to comply with 735 ILCS 2/-606, which required that “[i]f a claim is founded upon a written instrument, a copy thereof . . . must be attached to the pleading.”

6. The complaint herein is devoid of any assignment from Mercantile Bank of Southern Illinois to any subsequent assignee, including the captioned plaintiff.

7. Plaintiff, U. S. Bank National Association, filed an undated, unattached exhibit to the complaint entitled, “Allonge,” purporting to be an endorsement from *Mercantile Bank N.A.* executed by Paula Heard as “Assistant Vice President” of Mercantile Bank N.A.

8. Neither Mercantile Bank N.A. nor U.S. Bank National Association, are mortgagees, nor do they have any interest appearing on the face of the instrument appended to the complaint, including both the mortgage and underlying note sought to be foreclosed.

8. Other than the bald legal conclusion set out in ¶3(n) of the complaint, there is nothing in the body of the complaint or any exhibit establishing the captioned Plaintiff’s interest in this action.

ARGUMENT

It has long been established that “[i]t is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court’s remedial powers.” *Warth v. Seldin*, 422 U.S. 490, 518 (1975). To have standing to bring suit in federal court, a plaintiff must establish injury in fact, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). A plaintiff establishes injury in fact by showing that the actions or inactions of the defendant constituted an invasion of one of the plaintiff’s legally protected rights. *Id.* This injury must be concrete, particularized, and actual or imminent, and cannot be merely conjectural or hypothetical. *Id.*

Plaintiff lacks standing because the Complaint and attachments are devoid of any assignment from the original mortgagee to plaintiff. While the Complaint recites that “[p]laintiff is the mortgagee under 735 ILCS 5/15-1208,” (Complaint ¶3(n)) there is no assignment from Mercantile Bank of Southern Illinois to Plaintiff. The purported “Allonge” which is separate and not attached to the underlying note bears an endorsement in blank stamp purportedly executed from some Mercantile Bank which is a National Association and not from Mercantile Bank of Southern Illinois which is an Illinois Corporation. An internet search of the Federal Reserve Bank website for “Mercantile Bank NA,” reveals that Mercantile Bank of Illinois NA operated in Alton and merged with Mercantile Bank NA in Hartford, Illinois.¹ A Google search for “Mercantile Bank NA,” shows numerous financial institutions bearing that name throughout the world. None of the foregoing are the mortgagee named in the mortgage.

The Complaint is devoid of any facts establishing Plaintiff’s interest in this action. No evidence of a sale, transfer or assignment showing Plaintiff is “a proper party to invoke judicial resolution of the dispute and the exercise of the court’s remedial powers.” *Warth v. Seldin*, 422 U.S. 490, 518 (1975). Without this evidence, there is no certainty that Plaintiff is a proper party and that another entity will not come into court also seeking to foreclose this mortgage or to set aside any judgment entered herein. Absent any written instrument establishing Plaintiff’s right to redress, it lacks standing to bring this action. *Lujan*, 504 U.S. at 560; see *Farm Credit*, 634 N.E. 2d at 1318-19, citing 735 ILCS 5/2-606. (“§ 2-606 requires, in pertinent part, that if “a claim or defense is founded upon a written instrument, a copy thereof ... must be attached to the pleading.”

¹ http://www.stlouisfed.org/banking/structure/what_happened_to.cfm

Wherefore, the United States respectfully requests that this cause be dismissed.

Respectfully submitted this July 29, 2011.

UNITED STATES OF AMERICA

STEPHEN R. WIGGINTON
United States Attorney

s/ J. Christopher Moore

J. CHRISTOPHER MOORE
Assistant United States Attorney
United States Attorney's Office
Nine Executive Drive
Fairview Heights, IL 62208-1344
Phone: (618) 628-3700
Fax: (618) 622-3810
E-mail: Chris.Moore@usdoj.gov